

The Honorable Lauren King

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FANTAGRAPHICS BOOKS INC.,) No. 2:21-cv-00802-LK
)
Plaintiff,) FERRIS' REPLY BRIEF IN SUPPORT OF
) HER MOTION FOR PARTIAL SUMMARY
v.) JUDGMENT AND MOTION TO STRIKE
) FANTAGRAPHICS' INADMISSIBLE
EMIL FERRIS,) EVIDENCE
)
Defendant.) NOTED ON MOTION CALENDAR:
) July 29, 2022
)
_____)
EMIL FERRIS,)
)
Counterclaim Plaintiff,)
)
v.)
)
FANTAGRAPHICS BOOKS, INC.,)
)
Counterclaim Defendant.)
_____)

FERRIS' REPLY BRIEF IN SUPPORT
OF HER MOTION FOR PARTIAL
SUMMARY JUDGMENT
No. 2:21-cv-00802-LK

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INTRODUCTION

Fantagraphics' extensive response to Ferris' motion fails to answer a simple question: Why doesn't the Publishing Agreement expressly provide for a second volume? It would have been easy to do. Paragraph 1 of the Agreement defines "Book" to mean "a compilation of the Work in book form currently titled *My Favorite Thing is Monsters*." If the parties had meant for the Agreement to cover a second volume, they could have added to that definition "...which is to be published in two volumes." If they had done so, Fantagraphics would have the missing term that it now wants the Court to supply. But that's not what the Agreement says, even though Fantagraphics drafted it and could have proposed any language it wanted.

Applying *Hearst* and the parol evidence rule, the Court should give effect to the plain terms that are contained in the Agreement and not consider extrinsic evidence that changes the ordinary meaning of those terms. For this reason, it should strike the Declaration of Gary Groth, which amounts to a 20-page attempt to prove that "Book" means "Books." The Court should also strike that declaration because it violates 28 U.S.C. § 1746; it relies on documents that it does not attach, let alone authenticate; and because it is filled with hearsay.

Under *Hearst*, the Court should not "interpret what was intended to be written but what was written." Because the parties agree that what was written is unambiguous – and because it only yields one reasonable interpretation – the Court should dismiss Fantagraphics' claim for declaratory judgment and enter judgment for Ferris on her competing counterclaim for declaratory judgment as a matter of law.

1 **A. Hearst Both Supports the Application of the Parol Evidence Rule in This Case, and**
 2 **Farris' Interpretation of the Publishing Agreement.**

3 Fantagraphics claims that *Hearst* compels the Court to admit the extrinsic evidence it
 4 offers – which the Court can only do by ignoring the parol evidence rule.¹ Not surprisingly,
 5 however, *Hearst* stands for the opposite proposition.

6 In *Hearst*, the Washington Supreme Court considered the joint operating agreement
 7 between Seattle's two daily newspapers, *The Seattle Times* and the Hearst-owned *Seattle Post-*
 8 *Intelligencer*. *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 495 (2005)
 9 (*en banc*). Hearst claimed that the *Seattle Times* breached the agreement by invoking the “loss
 10 operations” clause, which enabled the *Times* to terminate the agreement after three consecutive
 11 years of operations losses. *Id.* at 501. The *Times* argued it was entitled to trigger the clause
 12 because it had, in fact, suffered three consecutive years of losses. *Id.* Hearst countered that the
 13 losses were the result of *force majeure*, namely, a strike, and that the loss operations clause was
 14 intended to apply only if future changes in the market made the Seattle area unable to support
 15 two newspapers. *Id.* Both parties offered extrinsic evidence in support of their positions. *Id.*

16 The trial court granted summary judgment in favor of Hearst, relying almost exclusively
 17 on that extrinsic evidence to support its decision. *Id.* at 500. The Court of Appeals reversed and
 18 ordered entry of summary judgment in favor of the *Times*. *Id.* The Supreme Court affirmed. *Id.*

19 The Supreme Court understood the harsh and powerful impact of its decision – by finding
 20 for the *Times*, it would likely cause the *Post-Intelligencer* to close. *Id.* at 495. Despite such a
 21 lamentable result, it recognized: “Our duty . . . is to interpret and apply the law.” *Id.* In doing
 22 so, the Supreme Court found that the operating agreement was subject to only one reasonable
 23

24 ¹ See, e.g., Fantagraphics' Opp'n to Ferris' Mot. for Partial Sum. J. (Dkt. #35) (“Opp'n Brief”) at 11:14-16
 25 (“...*Hearst* effectively requires that [extrinsic] evidence be considered in interpreting the Agreement.”) (emphasis in
 26 original).

1 interpretation. *Id.* Therefore, there was no need to look elsewhere for help interpreting the
 2 contract. In its words: “Extrinsic evidence offered by the parties is not relevant to our inquiry.”
 3 *Id.* at 512.

4 The Supreme Court noted that although Hearst understood that the Times could only
 5 terminate the agreement if the Seattle economy had so deteriorated that it was no longer feasible
 6 to operate more than one newspaper, “nowhere in the text of the [agreement] is there language
 7 supporting” that interpretation. *Id.* at 509. It found that “[i]f the parties intended the [agreement]
 8 could be terminated only upon a showing that the marketplace would no longer support two
 9 newspapers . . . they failed to express that intent within the agreement they wrote.” *Id.* at 510
 10 (emphasis in original). As such, “Hearst essentially asks us to rewrite the [agreement] by
 11 revising the loss operations clause, something we are not at liberty to do.” *Id.*

12 Against this backdrop, the Supreme Court took the opportunity to note that previous
 13 courts may have misunderstood *Berg v. Hudesman*, 115 Wn.2d 657 (1990), “as authorizing
 14 unrestricted use of extrinsic evidence in contract analysis, thus creating unpredictability in
 15 contract interpretations.” *Id.* at 503. It then stated:

16 We take this opportunity to acknowledge that Washington continues to follow the
 17 objective manifestation theory of contracts. Under this approach, we attempt to
 18 determine the parties’ intent by focusing on the objective manifestations of the
 19 agreement, rather than on the unexpressed subjective intent of the parties. We
 20 impute an intention corresponding to the reasonable meaning of the words used.
 21 Thus, when interpreting contracts, the subjective intent of the parties is generally
 22 irrelevant if the intent can be determined from the actual words used. We
 23 generally give words in a contract their ordinary, usual, and popular meaning
 24 unless the entirety of the agreement clearly demonstrates a contrary intent. We do
 25 not interpret what was intended to be written but what was written.

26 *Id.* at 503-04 (citations omitted).

This holding both supports the parol evidence rule in this case and Ferris’ interpretation
 of the Publishing Agreement. Applying *Hearst* to this case:

- 1 • The Court should interpret the words that were written in the Publishing Agreement (*e.g.*, “Book,” singular), not the words that Fantagraphics claims were intended to be written (*e.g.*, “Books,” plural);
- 2
- 3 • The Court should give the words their “ordinary, usual, and popular meaning” (*e.g.*, “Book” is ordinarily understood to be a single writing, not a series of writings); and
- 4
- 5 • The Court should determine the parties’ intent from the actual words used in the Agreement, rather than any unexpressed subjective intent – which is “irrelevant.”
- 6

7 As with *Hearst* – a case decided on summary judgment – Fantagraphics asks this Court to
 8 rewrite the Publishing Agreement: to substitute “Books” for “Book.” *Hearst* indicates that the
 9 Court should not do so. “Nowhere in the text” of the Publishing Agreement “is there language
 10 supporting” Fantagraphics’ interpretation. *Id.* at 509. As such, the Court should not consider the
 11 extrinsic evidence that Fantagraphics offers in an effort to provide it. Extrinsic evidence simply
 12 “is not relevant” to the Court’s inquiry. *Id.* at 512. *See also, Phytelligence, Inc. v. Washington*
 13 *State Univ.*, No. C18-405-RSM, 2019 WL 2491911, at *4 (W.D. Wash. June 14, 2019)
 14 (excluding on summary judgment plaintiff’s extrinsic evidence offered in support of its contract
 15 claim) (quoting *Hearst*, 154 Wn.2d at 503; additional citations omitted).

16 **B. The Publishing Agreement Is Unambiguous. Therefore, the Court Should Construe**
 17 **It as a Matter of Law.**

18 **1. The parties agree that the Publishing Agreement is unambiguous.**

19 Fantagraphics’ Complaint states that “there is nothing ‘ambiguous’ about the Publishing
 20 Agreement, including with respect to the identification of the work to be published pursuant to
 21 it.”² This constitutes a judicial admission – a point that Fantagraphics’ brief does not dispute.³
 22 *See Badgley v. F/V Redemption*, No. C13-2000-RSL, 2015 WL 11237491, at *2 (W.D. Wash.

24 ² Complaint for Declaratory Judgment (Dkt. #2) (“Complaint”) at ¶ 12.

25 ³ *See* Opp’n Brief.

Jan. 22, 2015) (“Statements contained in the pleadings are judicial admissions. . . unless amended, these statements conclusively bind the party who made them.”) (*citing Sicor Ltd. v. Cetus Corp.*, 51 F.3d 848, 859-60 (9th Cir. 1995)). “The general rule is that a party cannot create a triable issue by relying on a declaration that is inconsistent with the facts alleged in its complaint.” *PTP OneClick, LLC v. Avalara, Inc.*, No. C19-0640-JLR, 2020 WL 4729174, at *7 (W.D. Wash. May 27, 2020) (citations omitted). Because Fantagraphics did not attempt to withdraw its judicial admission that the Publishing Agreement is unambiguous, it cannot defeat Ferris’ motion by taking the opposite position now.

Ferris agrees that “there is nothing ‘ambiguous’ about the Publishing Agreement. . . .”⁴ Therefore, the Court should construe it as a matter of law. *See Orbridge LLC v. Safari Legacy, Inc.*, No. 3:20-CV-6259-BJR, 2021 WL 3269599, at *4 (W.D. Wash. July 30, 2021) (“If a contract is unambiguous, summary judgment is proper[.]”) (brackets in original; *quoting Voorde Poorte v. Evans*, 66 Wn. App. 358, 362 (1992)). This is true even if the parties disagree about its meaning. *See Mayer v. Pierce County Medical Bureau, Inc.*, 80 Wn. App. 416, 420 (1995) (“If a contract is unambiguous, or its language, in context, has but one reasonable meaning, a court may grant summary judgment even if the parties dispute the legal effect of a term or provision.”). It is also true even if the outcome is viewed by the losing party as being harsh. As *Hearst* demonstrates, what’s important is that the Court enforce the objective manifestations of the parties’ bargain.

2. The plain text of the Publishing Agreement provides that it is limited to the book that Fantagraphics has already published.

The unambiguous Publishing Agreement is titled, “Publishing Agreement / *My Favorite Thing Is Monsters*.”⁵ It is undisputed that Fantagraphics has already published a book titled

⁴ Complaint at ¶ 12; Ferris’ Mot. for Partial Sum. J. (Dkt. #33) (“Ferris’ Mot.”) at 2:10, 11:9-15.

⁵ Decl. Emil Ferris (Dkt. #34) (“Ferris Decl.”) at Ex. A (Dkt. #34-1) (“Publishing Agreement”) (at 1).

1 *My Favorite Thing is Monsters*.⁶

2 The unambiguous Publishing Agreement addresses a single “Book,” a single “Work,” a
3 single “compilation” of Ferris’ writing, and a single reprint “edition.”⁷ The Agreement notably
4 does not use “Books,” “Works,” “compilations,” and “editions” – the plural form of these
5 words.⁸ Because the Publishing Agreement does not “clearly demonstrate[] a contrary intent,”
6 the Court should give its words “their ordinary, usual, and popular meaning.” *Hearst*, 154
7 Wn.2d at 504 (internal citations omitted).

8 The unambiguous Agreement also does not mention giving Fantagraphics the additional
9 right to publish a remnant, second volume, second part, or sequel.⁹ *See id.* (“We do not interpret
10 what was intended to be written but what was written.”). Indeed, Ferris explains that the edited-
11 out “remnant” was not the second part of the story in any case; it was “[l]ike pieces of film that
12 are edited and land on the cutting room floor. . . .”¹⁰ By the time she delivered the edited work to
13 Fantagraphics, the unused pieces that remained would not “make any sense and [would] be
14 confusing to readers” if presented as a continuation of the story.¹¹

15 Fantagraphics, for its part, “completely agree[s]” with the “factual and legal conclusion
16 that ‘[t]he Agreement by its express terms pertains only to the Monsters book’ (singular).¹² It
17 also admits that “as far as Fantagraphics is aware[,] the word and the concept of a ‘sequel’ to
18

19 ⁶ Complaint at ¶ 10; Ferris Decl. at ¶ 12.

20 ⁷ Publishing Agreement at ¶¶ 1(a), 2, 3(a)(i)-(vii), 4(a)(i)-(ii), 4(b), 4(d), 4(e), 5, 6(a).

21 ⁸ *See id.*

22 ⁹ *See* Publishing Agreement.

23 ¹⁰ Ferris Decl. at ¶ 7.

24 ¹¹ *Id.* at ¶¶ 8-9.

25 ¹² Complaint at ¶ 25.

1 MONSTERS was never once used in any of the prior five-plus years of communications between
 2 the parties[;] and Fantagraphics never once expressed any interest or desire to publish a ‘sequel’
 3 to MONSTERS.”¹³

4 The Court should give effect to the plain terms of the unambiguous Publishing
 5 Agreement, including what it says, and what it conspicuously doesn’t say. Because the
 6 Publishing Agreement only addresses a single “Book,” “Work,” “compilation,” and “edition,”
 7 and does not address any other writings – including the so-called remnant – the Court should
 8 conclude as a matter of law that it only governs the *Monsters* book that Fantagraphics has
 9 already published. *See id.*

10 **C. The Court Should Strike the Declaration of Gary Groth.**

11 **1. The Groth Declaration violates the parol evidence rule.**

12 Consistent with *Hearst*, if a written contract is fully integrated, extrinsic evidence is not
 13 admissible under the parol evidence rule to add to or vary the contract’s terms. *Hulbert v. Port*
 14 *of Everett*, 159 Wn. App. 389, 400 (2011). In this way, an integration clause limits “the evidence
 15 available to the parties should a dispute arise over the meaning of the contract. . . .” *Fairhaven*
 16 *Health, LLC v. BioOrigyn, LLC*, No. 2:19-CV-01860-RAJ, 2020 WL 5630473, at *7 (W.D.
 17 Wash. Sept. 21, 2020) (quoting *FMC Techs., Inc. v. Edwards*, No. C05-946-C, 2007 WL
 18 1725098, at *4 (W.D. Wash. June 12, 2007), *aff’d*, 302 F. App’x 577 (9th Cir. 2008)).

19 Here, Fantagraphics does not dispute that the Publishing Agreement is fully integrated.¹⁴
 20 Nor could it. Not only does the Agreement provide all the essential terms under which the
 21 parties have operated for 5+ years, it expressly states that it reflects the parties’ entire
 22 understanding:

23
 24 ¹³ *Id.*

25 ¹⁴ *See* Opp’n Brief.

Entire Understanding. This Agreement contains the entire understanding of the parties with respect to its subject matter. Any and all representations or agreements by any agent or representative of either party to the contrary shall be of no effect.¹⁵

The Agreement further states: “No waiver or modification of any of the terms of this Agreement shall be valid unless in writing, signed by both parties.”¹⁶ Taken together, these terms express the parties’ clear intent that the Publishing Agreement reflects their entire agreement as to Fantagraphics’ right to publish *Monsters*.

As a fully integrated contract, the parol evidence rule estops Fantagraphics from offering evidence of side understandings that purport to change the Agreement’s plain terms – which is exactly what the Groth Declaration attempts to do.¹⁷ It’s a “20-page, 67-paragraph” attempt to explain the meaning of a six-page agreement.¹⁸ However, the Publishing Agreement speaks for itself. There’s no ambiguity as to what a “Book” is, and that the singular form of that word is different from the plural. The Court should strike Fantagraphics’ wrongful declaration that attempts to prove otherwise: that “Book” actually means “Books.”

2. The Groth Declaration does not substantially comply with 28 U.S.C. § 1746, does not authenticate the documents on which it relies, and is filled with hearsay.

Besides being inadmissible under *Hearst* and the parol evidence rule, the Groth Declaration does not substantially comply with 28 U.S.C. § 1746; it is not based entirely on personal knowledge; it does not authenticate most of the documents on which it relies (or even attach them); and it is filled with inadmissible hearsay.

¹⁵ Publishing Agreement at Miscellaneous (at ¶ (e)).

¹⁶ *Id.* at ¶ (c).

¹⁷ *See* Groth Decl.

¹⁸ Opp’n Brief at 2:9. *See also*, Groth Decl.

Among other requirements, a declaration offered in opposition to a motion for summary judgment must be signed and certified as true under penalty of perjury. *See* 28 U.S.C. § 1746; Fed. R. Civ. P. 56(c)(4). To be admissible, the declaration must be made “substantially” in the following language: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.” 28 U.S.C. § 1746(2). *See also, Commodity Futures Trading Comm’n v. Topworth Int’l, Ltd.*, 205 F.3d 1107, 1112 (9th Cir. 1999). The purpose of this affirmation is to be certain that “the declarant understands the legal significance of the declarant’s statements and the potential for punishment if the declarant lies.” *United States v. Bueno-Vargas*, 383 F.3d 1104, 1111 (9th Cir. 2004).

The Groth Declaration (which Fantagraphics originally submitted unsigned) does not state that the ostensible facts stated therein are “true and correct.”¹⁹ This prevents it from substantially complying with 28 U.S.C. § 1746. *See Hoffman v. PennyMac Holdings, LLC*, No. C17-1062-JLR, 2018 WL 6448779, at *3 (W.D. Wash. Dec. 10, 2018) (noting that “substantial compliance” requires a declaration to state that “the contents [a]re true and correct.” (brackets in original; quoting *Schroeder v. McDonald*, 55 F.3d 454, 460 n.10 (9th Cir. 1995)); *Satterwhite v. Dy*, No. C11-528-RAJ, 2012 WL 748287, at *2 (W.D. Wash. Mar. 5, 2012) (striking declarations because “they do not attest that their statements are true and correct as required by 28 U.S.C. § 1746”); Fed. R. Civ. P. 56(c)(4).

The Groth Declaration also is not based entirely on personal knowledge. For example, Mr. Groth writes:

When this action was commenced, the only extant “Book 2” we were aware of was the second half of Ferris’ original submission of MONSTERS. As a result, our claim for a Declaratory Judgment was necessarily limited to that work. Obviously, if Ferris ever actually completed her long-promised “polished” version

¹⁹ *See* Groth Decl. Fantagraphics instead curiously asks the Court to determine “whether my assertions or Ferris’ assertions are true or false. . . .” *Id.* at ¶ 67.

– in whatever form that “polishing” took – we assume (and will assert in this litigation) that our requested Declaratory Judgment should encompass any “polished” version that Ferris may actually complete, precisely because the Publishing Agreement as consistently understood and agreed by both parties so contemplated and intended.²⁰

Mr. Groth’s unexplained shift to the plural forms “we” and “our” indicates that this statement is not based on his own personal knowledge. His assurance that Ms. Ferris’ assistant “will confirm” the substance of what Ms. Ferris told her in another conversation suffers from the same defect.²¹ As such, these statements are not admissible. *See* Fed. R. Civ. P. 56(c)(4).

The Groth Declaration is further inadmissible because it purports to summarize documents, but does not offer the documents into evidence, let alone authenticate them.²² “Authentication is a ‘condition precedent to admissibility,’ and this condition is satisfied by ‘evidence sufficient to support a finding that the matter in question is what its proponent claims.’” *See Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 773 (9th Cir. 2002) (quoting Fed. R. Evid. 901(a)) (additional citations omitted). The Ninth Circuit has “repeatedly held that unauthenticated documents cannot be considered in a motion for summary judgment.” *Id.* (collecting cases). “In a summary judgment motion, documents authenticated through personal knowledge must be ‘attached to an affidavit that meets the requirements of [Fed. R. Civ. P.] 56(e) and the affiant must be a person through whom the exhibits could be admitted into evidence.’” *Id.* at 773-74, *quoting Canada v. Blain’s Helicopters, Inc.*, 831 F.2d 920, 925 (9th Cir.1987) (additional citations omitted).

²⁰ *Id.* at ¶ 62 (emphasis added).

²¹ *See id.* at ¶ 57.

²² *See, e.g., id.* at ¶¶ 4-5, ¶¶ 7-10, ¶ 12, ¶ 16, ¶¶ 18-21, ¶ 23, ¶¶ 25-26, ¶¶ 28-32, ¶ 34, ¶ 36, ¶¶ 38-60, ¶ 63 (referring to approximately 45 letters, emails, writings, ostensible agreements, and other out-of-court statements that are neither attached to the Groth Declaration nor are authenticated).

Because the Groth Declaration does not attach or authenticate most of the documents on which it relies – approximately 45 such documents – it lacks foundation as to those documents. *See* Fed. R. Evid. 901(a), 1002. Its many assertions about what documents say (or what Mr. Groth, Ms. Ferris, or others did, said, or agreed to inside or outside those documents) also constitute inadmissible hearsay.²³ *See* Fed. R. Evid. 801, 802; *Orr*, 285 F.3d at 783 (“To defeat summary judgment, [the nonmoving party] ‘must respond with more than mere hearsay and legal conclusions.’”) (quoting *Kaiser Cement Corp. v. Fischbach & Moore, Inc.*, 793 F.2d 1100, 1104 (9th Cir. 1986)).

In short, the Groth Declaration is filled with inadmissible statements. Since the Court should not consider inadmissible evidence on summary judgment, it should strike the Groth Declaration in its entirety. *See Orr*, 285 F.3d at 773 (citations omitted); Fed. R. Civ. P. 56(c)(2), (4).

D. Summary Judgment Is Appropriate Because Fantagraphics Did Not Support Its Opposition Under Rule 56(c)(1)(A).

Finally, the Court should grant summary judgment because Fantagraphics failed to support its response under Federal Rule of Civil Procedure 56(c)(1)(A). This requires a party opposing a motion for summary judgment to support the assertion that a fact is genuinely

²³ *See, e.g., id.* at ¶ 15 (“...Ferris agreed that it could include the proposed Book 2 front-cover...”), ¶ 16 (“...Ferris advised Fantagraphics that she wanted to edit somewhat (‘polish’) the second half of MONSTERS...”), ¶ 19 (“...Ferris agreed to deliver her ‘polished’ version of the second half of her original manuscript in time for it to be prepared for publication and then published in July 2017”), ¶ 20 (“With Ferris’ full support and agreement ... Fantagraphics published the first volume of MONSTERS in February 2017”), ¶ 23 (“...Ferris and Bemis and Fantagraphics agreed to reschedule the publication of Book 2 to October 2017, with Ferris again promising that she would deliver her ‘polished’ version in time to have it published then.”), ¶ 25 (“After further communication with Ferris and Bemis, the parties agreed that Book 2 would now be published in April 2018...”), ¶ 29 (“Fantagraphics then informed Ferris that it could not risk further damaging its relationships with its distributors...”), ¶ 30 (“...Ferris repeatedly confirmed in writing that MONSTERS would be published in two volumes...”), ¶ 31 (“...[T]here is also a trove of similar such communications by Bemiss, Ferris’ agent...”), ¶ 52 (“...Ferris and Fantagraphics agreed to create and publish a ‘one shot’ 32-page comic book to help promote both Book 1 and Book 2 of MONSTERS.”), ¶ 57 (“Bernard has and will confirm that Ferris directly told her that she (Ferris) was obligated to complete and deliver Book 2 to Fantagraphics....”).

disputed by “citing to particular parts of materials in the record.” Tellingly, Fantagraphics’ Opposition Brief did not satisfy this requirement.²⁴ The Court is “not required to comb through the record to find some reason to deny a motion for summary judgment.” *Carmen v. San Francisco Unified Sch. Dist.*, 237 F.3d 1026, 1029 (9th Cir. 2001) (quoting *Forsberg v. Pac. Northwest Bell Tel. Co.*, 840 F.2d 1409, 1418 (9th Cir. 1988)). Instead, the “party opposing summary judgment must direct [the Court’s] attention to specific triable facts.” *Southern California Gas Co. v. City of Santa Ana*, 336 F.3d 885, 889 (9th Cir. 2003). Because Fantagraphics did not do so, the Court should not hesitate to grant Ferris’ motion for summary judgment.

DATED this 29th day of July, 2022.

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²⁴ See Opp’n Brief.

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System, which will automatically generate a Notice of Electronic Filing to all parties in the case who are registered users of the CM/ECF system.

By /s/ Michael G. Atkins
Michael G. Atkins